PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item # 36 ID#2610

ENERGY DIVISION **RESOLUTION E-3843**

SEPTEMBER 18, 2003

R E S O L U T I O N

Resolution E-3843. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) filed tariff changes to implement the rules governing the rights and obligations of Direct Access (DA) customers to switch between bundled and DA service, as adopted in D.03-05-034, the "Switching Order." Approved with modifications.

By PG&E Advice Letter (AL) 2393-E, SCE AL 1717-E, and SDG&E AL 1508-E filed on June 23, 2003.

SUMMARY

This Resolution resolves implementation issues regarding the rules we adopted for eligible direct access (DA) customers to choose an ESP and continue on DA service if they had returned or been returned to bundled service after September 20, 2001.

BACKGROUND

By Decision (D.)02-03-055, we confirmed the DA suspension date of September 20, 2001 and adopted rules to implement that suspension. Among other things, we allowed DA customers who signed a direct access contract prior to September 20, 2001 to choose a new ESP and continue on direct access, subject to certain restrictions, even if they had returned to bundled service after September 20, 2001. This rule was termed the "switching exemption." The Utility Reform Network (TURN) filed an Application for Rehearing that argued the basis and lawfulness of the switching exemption. By Ordering Paragraph (OP) 4 of D.02-04-067, we granted a limited rehearing on the switching exemption to consider its legality in light of Assembly Bill 1X (2001) and D.01-09-060, and to develop an adequate record on this exemption.

Decision 02-11-022 in Rulemaking (R.) 02-01-011 adopted the DA cost responsibility surcharge (DA CRS) but deferred consideration of the switching exemption. On May 8, 2003, we issued D.03-05-034 (also referred to as the Switching Order) to adopt rules to implement the switching exemption, as well as to address its legality as granted in D.02-04-067. Finally, by D.03-06-035, we addressed applications for rehearing of D.03-05-034, filed by TURN, Edison and PG&E, and granted a limited rehearing on the issue of using the California Independent System Operator (ISO) hourly price as a proxy for the short-term commodity price of electricity. The applications for rehearing were otherwise denied in all other respects.

In the Switching Order, we directed the utilities to jointly develop advice letters within 45 days to file tariff changes and develop implementation timing and details necessary to comply with that order. Within 15 days of the filing of the advice letter, the utilities were required to notify "grandfathered" DA customers by letter that they have 45 days from the date of the letter during which to respond if they elect to return to DA. The original schedule set forth in the Switching Order required these rules to be fully implemented by August 21, 2003 (OP 8).

On June 6, 2003, the Commission's Energy Division hosted a Rule 22 Working Group meeting as directed in the Switching Order, to discuss and resolve implementation issues arising from the rules adopted in that order. At the workshop, the utilities proposed an extended schedule resulting in a final implementation date of November 3, 2003, (instead of August 21, 2003). This proposal contemplated mailing the 45-day notification letter on September 19, 2003 (i.e., 45 days before November 3, 2003). No party expressed opposition to this proposal, and on July 3, 2003, the Commission's Executive Director granted the extension request of the utilities.

As directed in the Switching Order, on June 23, 2003 PG&E filed AL 2393-E; SCE filed AL 1717-E, and SDG&E filed AL 1508-E. Parties at the Rule 22 Working Group meeting were unable to resolve all of the implementation issues and require Commission determination for final implementation.

NOTICE

Notice of PG&E AL 2393-E, SCE AL 1717-E, and SDG&E AL 1508-E was made by publication in the Commission's Daily Calendar. PG&E, SCE, and SDG&E state

in their respective Als that in accordance with General Order 96-A, Section III, Paragraph G, this advice letter was sent to parties shown on the attached list and the service list for R. 02-01-011.

PROTESTS

Three parties timely protested PG&E's AL 2393-E, the Alliance for Retail Energy Markets and the Western Power Trading Forum (AReM/WPTF), Energy Management Services (EMS), and Calloway Golf. The same three parties timely protested SDG&E's AL 1508-E and SCE's AL 1717-E. In addition, Hitachi Global Systems Technologies (Hitachi) and SBC Services, Inc. (SBC) timely protested SCE's AL.

The utilities responded jointly to the protest of EMS on July 18, 2003 and to the protest of Callaway Golf on July 21, 2003. PG&E and SDG&E responded jointly to the protest of AReM/WPTF on July 21, 2003. SCE responded to the protests of SBC and Hitachi on July 17, 2003 and to the protest of AReM/WPTF on July 21, 2003.

The following is a more detailed summary of the major issues raised in the protests.

DISCUSSION

Parties at the June 6 Rule 22 Working Group Meeting raised a number of implementation issues, some of which they were able to resolve. Other issues required additional Commission guidance. In this section, we will address those issues. Parties at the workshop were able to resolve the following issues, some of which are not yet and need to be reflected in utility tariffs:

- After a DA customer gives the utility its 6-month notice to return to bundled service, the utility will allow the customer a 3-day rescission period. Based on SCE's comments on the draft Resolution (DR), SCE does not concur with this provision. SCE's proposed tariffs filed in its AL do not comply, since once the customer's request is received, it cannot be cancelled. The utilities shall modify their tariffs as prescribed in the Comments Section.

- Before two and a half years elapses on a three-year term of bundled service, the utility will provide the bundled service customer with a notice before the customer faces the decision as whether to stay with bundled service or to sign up with an ESP for DA service. The utilities have proposed acceptable tariff language to implement this provision.

- For purposes of implementing the safe harbor rule, the utility will allow the ESP a 20-day window after the initial DASR is rejected for the DASR to be corrected. The utilities have reflected this provision in their proposed tariffs.

Sixty-Day Meter Change Deadline

AReM/WPTF protested PG&E's and SCE's proposed Rule 22.1, and SDG&E's proposed Rule 25.1 (§§ A.2.c and C.6.c in all cases), which provides that for accepted Direct Access Service Requests ("DASRs") that require a meter change, the utility will cancel the DASR if the meter change is not completed within 60 days after the receipt of the DASR (or corrected DASR).

Among other things, SCE in its response, as well as PG&E and SDG&E in their joint response, point out that by definition, all the affected customers have been on DA and thus already have a DA compatible meter, so the 60-day time requirement is reasonable. Furthermore, all three utilities agree that if the ESP wishes to install a different meter, and cannot accomplish this within 60 days, the switch can be done after the customer returns to DA service. SDG&E and PG&E in their joint response also argue that adopting AReM/WPTF's proposal to apply the 180-day rule, would extend the safe harbor from the Switching Order's 60 days to as long as 260 days (i.e., 60 days to submit DASR; 20 days to correct DASR; 180 days to install meter) or more than four times the length of the intended transition period.

PG&E's rule requires that if the new ESP insists upon installing a new meter before the customer can switch back to direct access, the change must occur within 60 days after acceptance of the DASR. However, PG&E and SCE maintain that in most cases, if there are delays in switching the meter, the customer can be put back on direct access with its existing meter, and the ESP can change the meter after the customer is back on DA service. We find this approach reasonable. The utilities' tariffs should reflect that alternative (for the customer to return to DA service with its existing meter wherever possible) so that the 60-day limit on the safe harbor period is preserved. The utilities shall not use the

60-day rule to cancel DASRs and prevent eligible customers from returning to DA service. If the ESP is unable to change the meter within 60 days, it may serve the customer using the existing meter until such time as the meter change can be accomplished. Therefore, PG&E, SCE, and SDG&E shall modify the provisions of proposed Rule 22.1 and 25.1 respectively, to provide for returns to DA service with existing meters wherever possible and to complete all necessary steps to allow the ESP to complete any necessary meter changes timely.

New ESP Restriction

AReM/WPTF in its protest to SCE's AL, argues that the restrictive provision of proposed Rule 22.1 (§ A.7) that prohibits DA customers that utilize the 60-day safe harbor from resuming DA service with their former ESP should be deleted. PG&E and SDG&E deleted this restrictive language at the request of parties at the June 6, 2003 Rule 22 Working Group meeting. SCE in its response argues that its restrictive tariff is necessary due to the potential for arbitrage and also because the transitional bundled service (TBS) rate might not be as high as the actual cost incurred by SCE to serve TBS customers as demonstrated by a few instances in the past. SCE recommends against allowing DA customers to switch to the same ESP, because this would allow ESPs to arbitrage their prices for power against the TBS price and return customers to SCE under the "safe harbor" provision when the TBS price is lower than their price. SCE argues that this situation is exactly what occurred during the energy crisis when Enron returned many of its DA customers to bundled service, without the customer's knowledge, to take advantage of lower bundled rates.

We concur with AReM/WPTF that the restrictive provision proposed by SCE in its tariff would serve to limit the competitive options available to DA-eligible customers. SCE's proposal places an undue restriction on customers trying to return to DA service after their stay in the safe harbor. SCE's requirement that DA customers must switch to a different ESP is more restrictive than our directive about the short-term nature of the TBS set forth in OP 5 of the Switching Order, which allows flexibility for new offerings as market conditions change. The safe harbor period is not indefinite, as was the situation during the 2000-01 crisis cited by SCE. Nor can customers under the Switching Order rules return to bundled service without notice and a lengthy time commitment. We expect the time period limitations of the safe harbor will work to hinder arbitrage and thus reject SCE's prohibition against the customer's returning to the same ESP.

The TBS pricing structure will also help insure that bundled service customers will be indifferent to those DA customers' temporarily returning to bundled service under TBS. However, we consider numerous and repeated returns to bundled service for apparent arbitrage as grounds for revisiting these safe harbor rules.

Continuous DA Status for Safe Harbor and Other Customers

Parties disagreed as to whether the safe harbor requirements adopted in the Switching Order regarding continuous DA status apply retroactively for those taking bundled service after September 20, 2001. A continuous DA customer, as provided in D.02-11-022, that remained on DA both before and after February 1, 2001, shall be excluded from the DWR power and bond charges. The controversy is whether customers that returned to bundled service after DA suspension can retain their CRS exemption. SBC in its protest and at the June 6 Rule 22 Working Group meeting argued that its comments on the proposed decisions on the switching exemption were adopted in the Switching Order.

The dispute involves interpretation of language in the Switching Order (at mimeo p. 19) "We also clarify that if a customer was exempt from DWR charges as a "continuous" DA customer (i.e., taking DA prior to February 1, 2001), that customer does not lose the exemption upon returning to DA service after utilizing the "safe harbor" provisions. We also clarify that for switches to utility bundled service for transitional purposes prior to the effective date of this order, the safe harbor period shall be 60 days from the time the DA status of the account was deactivated until a new DASR is submitted. We conclude that such accommodation is appropriate for switches that occurred prior to this order since parties were not on notice as to the 60-day limit adopted in this order."

AReM/WPTF, SBC, and Hitachi protested the unique position SCE took in its AL that the safe harbor does not apply retroactively more than 60 days prior to the effective date of D.03-05-034 (i.e., March 8, 2003). These parties insist that the safe harbor period has retroactive application to September 21, 2001, and SCE has no basis to contend otherwise. Moreover, the Switching Order contains no mention of SCE's proposed March 8th trigger date for the safe harbor period. SBC notes that the proposed tariffs concurrently filed by PG&E and SDG&E offer appropriate models for SCE to follow. SCE in its responses insists that its interpretation meets the requirements in the Switching Order and objects to the idea that Hitachi finds it clear throughout that Order that the 60-day period runs once the DA status of the account is deactivated, regardless of when the account

was deactivated. Citing retroactive ratemaking, SCE argues the impossibility of these parties' position on the basis of not being able to compute TBS pricing retroactively. SCE states that no transitional returns to bundled service (TBS) pricing, or any associated incremental cost pricing for TBS, could occur prior to D.03-05-034. In fact, SCE asserts that there will be no TBS until November 3, 2003, at the earliest. (See letter from William Ahern, Executive Director of the Commission, dated July 3, 2003, granting the July 1, 2003 request by PG&E, SDG&E, and SCE for an extension of time to implement the switching exemption rules). SCE also discounts SBC's position that the Commission modified the proposed decision in accordance with SBC's comments, pointing out that the final decision did not include SBC's January 1, 2002 date, let alone the September 20, 2001 date.

SCE in its responses also argues that as more DA customers are reclassified as "continuous" DA customers, there will be less "non-continuous" DA customers to pay back the DA CRS undercollections. With fewer DA customers over which to spread the CRS costs, the cost per DA customer rises, as does the likelihood of default by those customers and an increased risk that bundled service customers will never be repaid the amounts postponed under the 2.7 cents cap. Furthermore, SCE argues that additional DA customers being reclassified as "continuous" DA customers could require additional calculations that might delay DWR's revenue requirement proceeding.

We determined in the Switching Order that the 60-day safe harbor should be available to those continuous DA customers that were returned to bundled service before we adopted the switching exemption rules. However, after DA suspension, DA customers returned to bundled service for any reason were allegedly unable to resume DA service. According to AReM/WPTF, SCE's standard practice has been to reject DASRs to resume DA service submitted on behalf of DA customers that were returned to bundled service after September 20, 2001, pending resolution of the switching exemption rehearing. The utilities, in their comments on the DR, deny that such is the case. In any event, to the extent customers' representatives have an accurate understanding that customers returned to bundled service after September 20, 2001 have been unable to return to DA, making their continuous DA status contingent on their having DASRs submitted on their behalf within 60 days would be unreasonable. Also we note with regard to SCE's concern about DA customers being "reclassified" as continuous, any such "reclassification" involves current bundled service customers, not DA customers currently paying the CRS.

Therefore, we clarify our accommodation for DA eligible customers that were on DA service prior to February 1, 2001 and returned to bundled service after September 20, 2001 but prior to implementation of the Switching Order. Because this subgroup of DA customers allegedly had no means after DA suspension of exercising their right to return to DA service, we clarify that their continuous status shall be honored if they elect to return to DA service during their 45-day window. Therefore the protests of AReM/WPTF, Hitachi, and SBC on this matter are granted as specified herein. PG&E, SDG&E, and SCE shall modify their tariffs appropriately to implement the rules for continuous DA status as specified above.

A similar issue is whether a continuous DA customer that elects a 3-year term on bundled service retains its continuous DA status when it returns to DA at the end of those three years. In protests to the utilities' ALs, AReM/WPTF argues that no justification exists for requiring continuous DA customers that commit to receive bundled service for a 3-year period to pay DWR charges if they resume DA service at the end of their 3-year commitment period. These parties argue that nothing in D.03-05-034 suggests that such customers should lose their exemptions from paying DWR charges if they resume DA service. They add that to the extent the customer utilizes power procured under DWR contracts while on bundled service, the customer will pay the full costs of that power through bundled service rates.

Callaway Golf also argues that a customer should never lose its status as a "continuous" DA customer, regardless of the length of the customer's stay on bundled service. Callaway Golf reasons that in D.03-05-034 (p. 40), we held DA customers that return to bundled service remain liable for their respective share of the DA CRS undercollections resulting from the period they took DA service. Since that decision held customers responsible for DWR charges regardless of any switching that may occur between DA and bundled service, the reverse should also be true – that continuous DA customers not responsible for DWR charges should not acquire a new obligation to bear DWR charges upon a return to DA.

Callaway Golf also notes that in D.03-05-034 (p.30), we expressed concern regarding "cost-shifting" when customers switch between bundled and DA service. According to Callaway Golf, there is no shifting of DWR costs, however,

when a continuous direct access customer returns to DA service, because the customer never previously bore DWR costs.

SCE in its response and PG&E and SDG&E in their joint response reiterate the determination made in D.02-11-022 that any DA customer returning to bundled service after February 1, 2001 shall be responsible for DA CRS charges and lose its continuous DA status (D.02-11-022, OP 13). The only exception granted in the Switching Order was for safe harbor customers (p. 16). PG&E and SDG&E argue that the continuous DA customer should not be able to take advantage of the DWR portfolio (by returning to a 3-year term on bundled service) without losing its continuous direct access status.

We have attempted to apply cost responsibility even handedly according to cost incurrence and legislative mandate. Therefore, we direct PG&E, SCE, and SDG&E to include language in their Rules 22.1 and 25.1 providing that continuous DA customers that commit to receive bundled procurement service for a 3-year period shall retain their continuous DA status if they resume DA service at the end of their 3-year commitment.

Applicability of SCE's Historical Procurement Charge

AReM/WPTF protests that SCE should modify its proposed Rule 22.1 to provide that customers who are eligible to receive DA service but who have heretofore remained on bundled service shall not be responsible for paying the Historical Procurement Charge (HPC) if they elect to exercise their DA rights under the Switching Exemption Rules, provided that SCE has fully recovered its PROACT balance by the time the customers start receiving DA service. This exception is necessary to prevent the double-recovery of amounts recorded in the PROACT from such customers, once through bundled rates which the customers have paid and continue to pay and a second time through the HPC should they elect direct access after PROACT is recovered.

SCE in its response states that during the Rule 22 Working Group meeting held on June 6, 2003, its representatives stated that customers who are eligible to receive DA service, but who have remained on bundled service and have paid their share of Procurement Related Obligations Account (PROACT) balance will not be charged the HPC if they switch to DA service during the 45-day transition period. SCE, however, did not state that it would include this statement in its Rule 22.1. However in its response, SCE again confirms that it will not charge the HPC to the DA customers described above.

Since the PROACT is fully paid off, and SCE proposed no mechanism for weighting customer responsibility during brief periods of bundled service, any bundled customer returning to DA after the 45-day customer notice that the utilities will provide to eligible DA customers, will be exempt from the HPC. SCE shall modify its tariffs to reflect this exemption.

Responsibility of Former DA Customer for CRS Undercollections When Returning to Bundled Procurement Service

As a result of the capping of the DA CRS implemented in D.02-11-022 and subsequent orders, DA customers have generated and will continue to generate significant undercollections of DWR-related costs. Therefore, we required that DA customers returning to bundled service remain liable for their respective share of DA CRS undercollections resulting from the period they took DA service. The returning DA customer shall thus remain responsible for the difference between the total DA CRS obligation at the date of the customer's switch to bundled service and the total amount paid pursuant to any DA CRS caps. The Rule 22 Working Group meeting, later replaced by the Utility Advice Letter process, was to address the issue of developing a tariff-based solution to provide for returning DA customers' repayment of an appropriate share of the accrued undercollection. This resolution will thus address the issue of the process for returning DA customers' repayment of prior obligations as directed in the Switching Order (p. 44-45, Finding 17).

PG&E proposes a tariff-based solution for applicable customers to repay an appropriate share of the accrued DA CRS undercollection. Customers who received DA service after September 20, 2001, and who were not otherwise exempt from paying the DA CRS, will be required to pay for the DA CRS undercollections for the period during which they took DA service.

DA customers who contributed to the DA CRS undercollection should be required to begin paying the DA CRS undercollection when the then-current DA CRS revenue requirement is less than the DA CRS revenue, which could occur months or years after implementation of the switching rules. At that time, PG&E anticipates that the CRS will include a "shortfall rate" for DA CRS undercollection. Customers who received only DA service after September 20, 2001, are obligated to pay this shortfall rate in full. Customers who did not

receive DA service for the entire period after September 20, 2001, shall pay a percentage of the shortfall rate. The percentage that applies to each customer will be determined by the periods they took DA service since September 20, 2001, and the periods of bundled service during which the DA CRS was paid. The percentage will be multiplied by the applicable shortfall rate and by the customer's current sales to determine the amount of repayment each month. SCE proposes a new charge, named the DA-CRS-UC for recovery of under-collections related to the DA-CRS cap. SCE's Schedule DA-CRS (renamed and modified Schedule DA) establishes the provisions for application of this charge to both DA customers as well as bundled service customers formerly served on DA. SDG&E is revising Schedule DA-CRS to establish the provisions for applying the undercollection to both DA customers as well as bundled service customers who were formerly served on DA after September 20, 2001. Neither SCE nor SDG&E describe any weighting of this new charge, as does PG&E.

PG&E's proposal is equitable in assigning costs to appropriate customers. We will approve PG&E's method for use in all three service territories. SCE and SDG&E shall modify their tariffs accordingly.

TBS Pricing

EMS protested the commodity charge calculation for TBS. The utilities responded jointly, citing discussion in the Switching Order about the undue complexity and impracticality of requiring each utility to calculate actual short-term commodity costs on an hour-by-hour basis incurred to serve" TBS customers (at mimeo p. 20). We note that TURN, SCE, and PG&E filed applications for rehearing of D.03-05-034, and we granted a limited rehearing in D.03-06-035 on the issue of using the ISO hourly price as a proxy for the short-term commodity price of electricity. Resolution of the issues raised by EMS will be in the forum established in the rehearing process.

COMMENTS

Public Utilities Code section 311(g)(1) provides that draft resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. The DR was mailed to parties for comment. Comments were submitted timely on September 3, 2003 by PG&E, SCE, SDG&E, the California Manufacturers & Technology Association (CMTA), AReM/WPTF, and the Building Owners and Managers Association (BOMA). Reply comments

were submitted timely on September 8, 2003 by Callaway Golf and jointly by PG&E, SCE, and SDG&E (the utilities).

Required Action 45 Days Following Customer Notice

Most of the commenting parties noted ambiguity in the DR and underlying advice letters regarding the timing of the submittal of DASRs for grandfathered DA customers who were returned to bundled utility service after September 20, 2001. Accordingly, these parties argue that the DR should be modified to clarify what action grandfathered DA customers must take by the end of the 45-day period in order to qualify for DA service. BOMA and AReM/WPTF recommend that customers be required to notify the utility by the end of the 45-day period of their election and be allowed 60 days thereafter for their ESPs to submit DASRs and receive acknowledgement of receipt from the utilities. During this period, customers will continue to receive bundled service rates.

The utilities in their reply comments disagree, arguing that D.03-05-034 implies that customers will be "returned" to DA service at the conclusion of the transition period. Requiring customers to notify the utilities by letter or e-mail of their election to switch back to DA is unnecessary and expends further utility administrative effort. Such a process creates other operational issues when the utility receives the customer's request to return to DA, but then receives no DASR and the utilities' switching exemption tariffs become effective at the conclusion of the "transition period." No 60-day safe harbor provision exists for billing at bundled rates. Furthermore, SDG&E and PG&E have already sent a "pre-notice" to eligible customers informing them that no action is necessary if they want to remain on bundled service.

For all the reasons specified above, our approach needs to focus on reducing customer confusion. DA service was suspended about two years ago. We clarify our intent that customers be allowed a reasonable period of time to research and evaluate their options. The 45-day window is not a reasonable deadline for DASR submittal, because some time lag necessarily exists between a customer's finalizing its service commitment with the ESP and the ESP's submitting the DASR. That would leave the customer with some unclear time period less than 45 days to select an ESP. BOMA's recommendation is consistent with our intent in the Switching Order. Since the utilities have already had to adjust their supplies to accommodate the customers involved, allowing these customers to remain on bundled rates is reasonable during this unique 45-day and subsequent safe harbor period. Utility administration could be minimized by requiring the

customer to respond only if planning to return to DA and if the response was provided by the customer by return mail on a form included in the notice letter. The utilities should include in the customer notice an addressed envelope and an election form set up such that the utility can readily identify customers. The purpose of the election form is primarily to assist customers in meeting the deadlines adopted in the Switching Order. Customers are not necessarily aware of all the tasks involved in switching their accounts to DA, so the return mail to the utility will help assure timely action on the part of these customers. The utilities can only act upon a customer's intent to take DA service when the DASR is filed. DASRs on behalf of these grandfathered customers need to be filed timely to ensure that the account will receive DA service by the end of the 60-day safe harbor period that begins at the end of the 45-day customer notice period. Findings and an ordering pargraph have been added to this Resolution to incorporate these provisions.

Tariff Language Governing Meter Changes

CMTA in its comments expresses strong support for the changes ordered by the DR to the utility tariffs regarding meter changes. PG&E recommends the final Resolution adopt the following specific tariff language to implement the 60-day meter change deadline for safe harbor customers.

> "For accepted DASRs that require a meter change, the meter change must be completed within 60 days after the receipt of the DASR, or the corrected DASR. If a meter change is not completed within 60 days, PG&E will switch the account to direct access on the customer's next scheduled meter read date with notification to the ESP and customer at the conclusion of the 60-day period. If special metering services are required, such metering services will be done in accordance with Rate Schedules E-ESP and E-EUS."

SCE and SDG&E propose substantially the same language, all of which meets the requirements adopted herein and is approved.

Continuous DA Status

The utilities contend that the DR is inconsistent with the Switching Order by providing that continuous DA status applies to customers "that were on DA service prior to February 1, 2001 and returned to bundled service after September 20, 2001 but prior to implementation of the Switching Order. In the Switching Order, we clarified that "for switches to utility bundled service for transitional purposes prior to the effective date of this order, the safe harbor period shall be

60 days from the time the DA status of the account was deactivated until a new DASR is submitted. We conclude that such accommodation is appropriate for switches that occurred prior to this order since parties were not on notice as to the 60-day limit adopted in this order." We intended such accommodation for customers prior to the Switching Order, since the safe harbor did not exist, and customers may not have had the opportunity to switch back to DA after the program was suspended. Moreover, these customers that took DA service prior to February 1, 2001 through September 20, 2001 were clearly not part of the bundled load while DWR was procuring power.

PG&E insists the final Resolution should restore the 60-day bundled service window for customers who returned to bundled service prior to the issuance of D. 03-05-034 to retain their continuous DA status. The utilities deny that they have prevented customers after September 20, 2001, from returning to DA service at will. SCE argues that the Commission's prior decision D.02-11-022 has interpreted PU Code Section 336(d)(2) to require all customers who received any DWR power as bundled service customers after February 1, 2001 to be subject to the DA CRS, thus the expansive definition of "continuous" DA customers proposed by the DR should not be adopted. However, the February 1, 2001 date for determining CRS liability is not compromised by the rules set forth in the DR, which implements the Switching Order, so the comments of the utilities in this regard are denied.

A related issue is the retention of an existing continuous DA customer's continuous DA status after a 3-year term on bundled service. The utilities argued that this provision in the DR is inconsistent with the Switching Order, because the only reference to the retention of the "continuous" DA status is when a customer enters the safe harbor and is subject to the TBS pricing. SCE views the TBS pricing as the quid-pro-quo for retaining "continuous" DA status. Callaway Golf in its reply comments argues that "Edison's argument improperly ignores the very basis upon which the Commission determined that continuous direct access customers should be exempt from the DWR portion of the direct access cost responsibility surcharge ("CRS"): Specifically, DWR did not purchase any power for continuous direct access customers. We agree with the point made by Callaway Golf. The utilities neglect the fact that the exempt DA customer that returns to bundled service for a 3-year commitment will pay for the DWR power it uses, for which charges it would have been exempt while receiving DA service. Thus no reason exists for that customer to gain a DA CRS obligation at the end of that term of bundled service. No costs are shifted to

bundled service customers as a result of a continuous DA customer's returning to DA after a term on bundled service.

Also, as Callaway Golf argues in its reply comments, we established in the Switching Order that when a DA customer switches to bundled service for the minimum three-year term, that customer shall remain responsible for its "respective share" of the CRS undercollections from the period during which the customer received direct access service. For a continuous direct access customer, the DWR portion of its CRS responsibility is zero. Therefore, the original provision as set forth in the DR is not altered.

Same ESP Restriction

CMTA expresses support and SCE objects to the DR's allowance for customers to return to the same ESP at the end of their stay in the safe harbor, especially in light of the Commission's concern expressed in the Switching Order of not allowing ice (TBS) pricing to become an arbitrage opportunity for the ESPs and their DA customers. SCE argues that obviously "switching from one ESP to another" does not entail using the "safe harbor" for eventually returning to the same ESP. Ordering Paragraph 5 states in part, "DA customers shall be permitted to return to bundled service on a transitional basis while switching from one electric service provider to another, or for similar reasons…." Therefore, SCE cites the "similar reasons" clause as the only basis for allowing a safe harbor customer to negotiate and return to the same ESP, a basis SCE finds unreasonable. In the DR, we explained our rationale for denying SCE's excessively restrictive rule and how the safe harbor rules we adopted should work to hinder arbitrage. The Switching Order did not adopt a prohibition against returning to the same ESP, which would unnecessarily limit the competitive options available to customers. Therefore, we reject SCE's prohibition against the customer's returning to the same ESP.

Three-Day Rescission Period

SCE strongly objects to the DR's requirement that it provide a 3-day rescission period to a customer who provides SCE its 6-month notice to return to bundled service. SCE argues that this requirement is without any justification, since "nowhere in the Decision has the Commission even hinted to a 'rescission period.'" If a 3-day rescission period is instituted, then SCE argues that it will effectively not be provided the 6-month notice, which is inconsistent with the Switching Order.

The 3-day rescission period is consistent with the change-of-heart allowed a customer when choosing an ESP. The customer has the "right to cancel any contract for electric service without fee or penalty until midnight of the third business day after the day you [the customer] signed the contract. If no contract is signed, you have the right to cancel any agreement for electric service without fee or penalty until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later." (language from Section 394.5 Notice provided to residential and small commercial DA customers).

SDG&E in its comments suggests tariff language for the final resolution to adopt to accomplish this objective. Therefore, we direct the utilities to modify their tariffs to include the following language:

Customers must provide a six-month advance notice to [utility name] prior to becoming eligible for BPS so [utility name] can adjust its procurement activity to accommodate the additional load. Such notification will be made by the customer submitting a Customer Advanced Notification Form in writing or electronically. [Utility name] will provide the customers written confirmation and necessary switching process information within 10 business days of receipt of the customers' notification. Once received by [utility name], customers will have a three-day rescission period after which advance notifications cannot be cancelled.

HPC Exemption

SCE agrees with the DR that DA-eligible bundled service customers who recently fully paid their share of the Procurement Related Obligation Account (PROACT) balance should be exempt from the Historical Procurement Charge (HPC) if they return to DA. SCE, however, notes that such full payment would have required the DA-eligible customer to have received bundled service from September 1, 2001 through July 18, 2003, the period over which the PROACT balance was fully recovered. SCE argues that exempting DA-eligible customers who spent only a few months on bundled service from paying the HPC would not be appropriate. SCE also states that it is unaware of any Commission decision that requires a downward adjustment in the DA CRS cap of 2.7 c/kWh for such customers, as adopted by the DR, while they still remain responsible for SCE's Competition Transition Charge (CTC) and DWR components of DA CRS.

SCE does not recommend any specific means of applying an equitable adjustment for customers that were on bundled service for a significant portion of the PROACT recovery period. Treatment of the HPC in the DR has been modified only to remove the provision for downward adjustment in the DA CRS cap of 2.7 c/kWh for such customers.

Extension for Implementation of Switching Exemption Rules

PG&E, Sce, and CMTA point out that the schedule set forth in the extension granted by the Executive Director on July 3, 2003 has already slipped, since the 45-day notification letter from the utility to each of its historical direct access customers was due to be mailed on September 19, 2003 with a final implementation contemplated on November 3, 2003. The timing of this resolution likely makes neither of these dates workable. Thus CMTA recommends a 2-week extension to the September 19 and November 3 dates. PG&E and SDG&E maintain that both dates need to be extended by at least 30 days to allow the tariffs to be finally approved prior to sending out the 45-day notice letter, and to allow final implementation processes and procedures to be completed. SCE requests a 45-day extension due to the extremely short implementation period in the Rate Stabilization Plan Proceeding (A.00-11-038), requiring the utilities to provide credits to all bundled service customers to reflect the $1 billion reduction in the DWR's 2003 Revenue Requirement. In view of SCE's request in this regard, PG&E and SDG&E also support a 45-day extension to allow all three utilities to send their letters out at the same time, and implement the rules on the same date. The utilities have submitted a Rule 48 letter, dated September 8, 2003, asking for this extension. That request shall be addressed by the Executive Director.

TBS Pricing

CMTA in its comments expresses concern that the DR incorrectly characterizes the nature of the EMS protest and rejects the modifications on which a consensus appears to have been reached (in a Rule 22 Workshop held on August 29, 2003 as part of the rehearing granted in D.03-06-035). The result is that during some interim period, customers relying on TBS will be charged more than the ISO ex post price, and the adders used will be inconsistent and inaccurate. Thus CMTA recommends that the DR should be changed to correctly state EMS' grounds for protest and grant the simple and clarifying changes EMS identified in its July 11 protest.

The utilities in their reply comments assert that it is premature to grant EMS's protest based on discussions at the Rule 22 workshop. We agree for substantially the same reasons cited by the utilities. The August 29, 2003 Rule 22 workshop was the initial step in exploring the parties' positions regarding the appropriate price proxy for the purposes of the rehearing. An order will be issued, based on the recommendations included in the workshop report. Final resolution of the price proxy issues must await that order. The issues raised in EMS's July 11 protest are therefore denied without prejudice, as we can not decide them in this forum.

FINDINGS

1. In D.03-05-034, the "Switching Order," we directed PG&E, SCE, and SDG&E to file Advice Letters to implement the rules we adopted to govern the rights and obligations that apply when DA customers return to bundled service and subsequently switch back to DA service.
2. Parties at the June 6, 2003 Rule 22 Working Group meeting resolved certain issues as explained in the discussion section herein.
3. On June 23, 2003, PG&E filed AL 2393-E, SCE filed AL 1717-E, and SDG&E filed AL 1508-E, proposing tariffs to implement the DA switching exemption rules.
4. AReM/WPTF, EMS, and Callaway Golf timely protested PG&E's AL 2393-E, SCE's AL 1717-E, and SDG&E's 1508-E.
5. SBC and Hitachi timely protested SCE's AL 1717-E.
6. We authorized the 45-day period in Ordering Paragraph 2 of the Switching Order to allow "grandfathered" DA customers (i.e., those that have switched to bundled service since September 20, 2001) a fair opportunity to research their opportunities and decide whether to remain on bundled service or to return to DA service.
7. Due to the unique circumstances, each customer that elects DA any time during the 45-day window period will be allowed a 60-day safe harbor beginning on the day after the 45-day period ends. Electric Service Providers thus have 60 days thereafter to submit DASRs and have the utilities switch their accounts, consistent with the safe harbor provisions of D.03-05-034.
8. Since the utilities have already had to adjust their supplies to accommodate customers returned to bundled service after September 20, 2001, allowing these customers to remain on bundled rates is reasonable during this unique 45-day and subsequent safe harbor period.

9. For most cases in which a customer's meter change is delayed, the customer can be put back on direct access with its existing meter, and the ESP can change the meter after the customer is back on DA service. Thus meter changes should neither extend the customer's stay in the safe harbor nor result in cancellation of the DASR by the utility.
10. At the request of parties at the June 6, 2003 Rule 22 Working Group meeting, PG&E and SDG&E deleted a prohibition on safe harbor customers' returning to DA service with their former ESP.
11. The competitive options available to safe harbor customers should not be unduly limited.
12. Numerous and repeated returns of DA customers to bundled service for purposes of arbitrage will serve as cause to revisit the safe harbor rules.
13. The Switching Order contains no mention of SCE's proposed March 8th trigger date for the retroactive safe harbor period.
14. The utilities may have been rejecting DASRs to resume DA service submitted on behalf of DA customers that were returned to bundled service after September 20, 2001, pending resolution of the switching exemption rehearing. Thus we would place an unfair condition on these customers returned to bundled service after September 20, 2001 to make their continuous DA status contingent on their having DASRs submitted on their behalf within 60 days of the deactivation of their DA service.
15. In D.03-05-034, we held DA customers that return to bundled service responsible for their respective share of DA CRS undercollections resulting from the period they took DA service. Thus the reverse should also be true – that continuous DA customers not responsible for DWR charges should not acquire a new obligation to bear DWR charges upon a return to DA.
16. Since SCE has fully recovered its PROACT balance, an HPC exception is warranted for DA eligible customers that have been on bundled service and elect to return to DA service during the 45-day notice period.
17. PG&E's proposed tariff-based solution for DA customers' returning to bundled service to repay an appropriate share of the accrued DA CRS undercollection is equitable in assigning costs to appropriate customers.
18. The TBS price issues raised in protests and comments will be addressed in the rehearing granted in D.03-06-035 and not in this forum.

THEREFORE IT IS ORDERED THAT:

1. The DA Switching Rules proposed by PG&E in Advice Letter AL 2393-E, SCE in AL 1717-E, and SDG&E in AL 1508-E are approved as modified herein.
2. PG&E, SCE, and SDG&E shall issue letters to each bundled customer that had DA service as of September 21, 2001, notifying thecustomers of their eligibility to return to DA service. The letter shall explain that the customer needs to decide, within 45 days, based on research of the available service offerings, whether to return to DA service and shall include an election form with a return mailing envelope addressed to the appropriate utility office. The letter shall stress the time constraints involved if the customer elects to return to DA service, requiring the customer to act promptly to contact and make all arrangements with an Electric Service Provider necessary to have the DASR submitted and the account switched by the end of the subsequent 60-day safe harbor period.
3. After a DA customer gives the utility its 6-month notice to return to bundled service, the utilities will allow the customer a 3-day rescission period before the notice becomes binding.
4. Before two and a half years elapses on a three-year term of bundled service, the utility will provide the bundled service customer with a notice before the customer faces the decision as whether to stay with bundled service or to sign up with an ESP for DA service.
5. For purposes of implementing the safe harbor rule, the utility shall allow the ESP a 20-day window after the initial DASR is rejected for the DASR to be corrected.
6. PG&E, SCE, and SDG&E shall provide for returns to DA service with existing meters wherever possible and to complete all necessary steps to allow the ESP to complete any necessary meter changes timely.
7. SCE shall delete the prohibition against a safe harbor customer's returning to the same ESP.
8. PG&E, SCE, and SDG&E shall modify § A.6 of their Proposed Rules 22.1 and 25.1, respectively to provide continuous DA status for DA eligible customers that were on DA service prior to February 1, 2001 and returned to bundled service after September 20, 2001 but prior to implementation of the Switching Order.
9. PG&E, SCE, and SDG&E shall include language in their Rules 22.1 and 25.1 providing that continuous DA customers that commit to receive bundled

procurement service for a 3-year period shall retain their continuous DA status if they resume DA service at the end of their 3-year commitment.

10. Since the PROACT is fully paid off, any bundled customer returning to DA after the 45-day customer notice that the utilities will provide to eligible DA customers, will be exempt from the HPC, and SCE shall modify its tariffs to reflect this exemption.
11. PG&E, SCE, and SDG&E shall make the tariff changes necessary to implement the tariff-based solution as proposed by PG&E for applicable former DA customers to repay an appropriate share of the accrued DA CRS undercollection. Customers who received DA service after September 20, 2001, and who were not otherwise exempt from paying the DA CRS, will be required to pay for the DA CRS undercollections for the period during which they took DA service.
12. Because the TBS price is the subject of rehearing granted in D.03-06-035, we deny EMS's protest without prejudice , pending the outcome of the limited rehearing granted in this matter.
13. The protests of AReM/WPTF, Callaway Golf, Hitachi, and SBC are granted to the extent specified herein and in all other respects denied.
14. Within 7 days of the effective date of this resolution, PG&E shall supplement AL 2393-E, SCE shall supplement AL 1717-E, and SDG&E shall supplement AL 1508-E to reflect the modifications to their proposed tariffs as specified and explicitly adopted in this Resolution. These supplemental advice letters shall be effective on the date granted for implementation of the DA switching exemption rules in response to the September 8, 2003 Rule 48 request of the utilities, subject to Energy Division's determining that they are in compliance with this Order.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 18, 2003; the following Commissioners voting favorably thereon:

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WILLIAM AHERN
Executive Director